

March 27, 2000

## **NOTICE CONFIRMING PROCEDURAL SCHEDULE**

**(April 28, 2000 and May 12, 2000)**

RE: In re Application of U S WEST, Inc. and Qwest Communications International, Inc., Docket No. UT-991358

TO ALL PARTIES:

**PLEASE TAKE NOTICE that the briefing schedule established at the close of the evidentiary hearings in this proceeding, which calls for Initial Briefs on April 28, 2000, and Reply Briefs on May 12, 2000, is hereby confirmed.**

On March 22, 2000, the Commission received for filing a request by U S WEST and Qwest (Joint Applicants) to revisit the briefing schedule established at the close of the evidentiary proceedings in this docket. The current schedule was established following discussion among the parties and the presiding Administrative Law Judge, and took into account the parties' needs, including Joint Applicants' needs, as expressed at the close of hearing. Presently, Initial Briefs are due on April 28, 2000, and Reply Briefs are due on May 12, 2000. Joint Applicants now request that Initial Briefs be due on April 19, 2000, and that Reply Briefs be due on May 1, 2000. The basis for their request is an asserted desire to close their merger transaction "during the second quarter." The Commission called for responses to Joint Applicants' request by noon, March 27, 2000.

Commission Staff opposes the requested adjustment to the procedural schedule and relates that "Staff's expert in this proceeding will be out of the office until April 10, 2000." Public Counsel states it "is unable to agree to a shortening of the timeline," citing other commitments, including hearings in other dockets pending before the Commission. Public Counsel also argues that in light of the schedules for proceedings concerning the merger pending before the FCC and in other states, it does not appear that shortening the schedule in this case will "make any significant difference [except to put] all parties under unnecessary additional time pressures." Intervenor AT&T, NEXTLINK, ATG, and McLeodUSA also say that to grant the Joint

Applicants' proposal to shorten the briefing schedule "would impose substantial hardship" on them and "deprive [them] of their right and ability to participate effectively in this proceeding." Covad and MetroNet Services oppose the Joint Applicants' request and note that the schedule worked out at the end of the hearing was the product of "consensus that it was workable for all." They say it would prejudice them to shorten the time presently allowed for Initial Briefs. These Intervenor suggest the alternative of eliminating the Reply Briefs. Rhythms Links also opposes Joint Applicants' request and says it needs "all of the time currently allotted" for briefs. Rhythms Links argues that "it is in the interest of all parties to settle all of the issues in this case if at all possible," and says granting Joint Applicants' request will reduce that possibility. The record supports that settlement negotiations among Joint Applicants and other parties continued at least as of the close of the evidentiary hearing.

The Commission, in consultation with the parties, has moved forward with all deliberate speed in this proceeding, as it strives to do in all adjudications. The original procedural schedule provided for hearings to be held during the period January 18-25, 2000, and established March 10, 2000, as the date for Initial Briefs. On December 22, 1999, the Commission continued that schedule at the request of Joint Applicants and Staff and the hearing date was moved to March 13, 2000, as the parties requested. That nearly seven-week continuance was permitted by the Commission to promote the parties' efforts to settle disputed issues.

The evidentiary hearings were concluded on March 21, 2000, over the objection of certain parties who argued a motion to continue the proceedings to permit additional time for supplemental discovery, for supplemental testimony, and to pursue settlement negotiations. The Commission denied that motion, noting, among other things, that the parties could pursue settlement negotiations in tandem with briefing.

The Commission is mindful that this is a complex case with a record of significant magnitude (*e.g.*, transcripts received through today total nearly 1,000 pages and three more hearing days await transcription; direct testimonies fill several three-inch binders; more than 125 exhibits were received). The parties require adequate time to distill this record into cogent and careful argument on brief. In addition, to now shorten the briefing schedule would limit the parties' ability to continue settlement discussions in tandem with briefing. Finally, the Commission has determined the need for Reply Briefs and considers them an important process requirement in this proceeding. For these reasons, Joint Applicants' request to shorten the briefing schedule is denied and Covad's alternative suggestion is rejected.

Sincerely,

DENNIS J. MOSS  
Administrative Law Judge